IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 947 of 2005

Mr.Manish Mangalia & ors .. Appellants

versus

Mumbai Municipal Corporation

and others .. Respondents

...

Mr.Prakash Shinde i/b M/s.M. Dhruva & Co. for the appellants.

Mr.R.A. Malandkar for the BMC.

Mr.P.N. Sain i/b i/b K.T. Thomas for respondent no.2.

Mr.Nitin H. Shukla for respondent no.4.

CORAM : D.G. KARNIK, J

DATED : 12th December 2006

P.C.:

1. This appeal is directed against the order, dated

28th September 2005 passed by the City Civil Court Mumbai directing the appellants to vacate the suit premises immediately as they are in a dangerous condition, was likely to collapse and further permitting the respondent no.1 municipal corporation from demolishing them as beyond repairs.

2. The appellants are the occupants/tenants of the building known as "Gnyan Bhavan" bearing no.336-A, Kalbadevi Road, Mumbai. According to the respondent no.1 the building has become so dangerous that it poses danger to life and property and requires immediate demolition. It is not in dispute that the building is more than 100 years old and was initially consisting of ground and five upper floors. The respondent no.1 called upon the owner as well as occupiers to remove the building before the specified time failing which it would take action of demolition at the risk of the occupiers. The appellants thereafter filed the suit, bearing L.C. Suit no.2505 of 2004, for an injunction restraining the respondent no.1 from taking any action in pursuance of the notice. Accordingly, the injunction was granted by the trial court by an order dated 16th/17th July 2004.

3. According to the respondent no.1 the building

further deteriorated and became extremely dangerous and was likely to collapse at any time. The respondent no.1 therefore moved the court for modification of the order of injunction and for a direction to the appellants to remove themselves and for a permission for pulling down the building. Thereupon, the Court appointed a Court Commissioner to visit site and report about the condition of the building. The Court Commissioner reported that atleast a portion of the building was required to be pulled down immediately from the top upto the ground floor. The appellants however opposed the application of the respondent no.1 for vacating the injunction interalia on the ground that the application did not come within the sweep of Rule 4 of Order 39 of the Code of Civil Procedure. The plea was rejected by the Court who held that subsequent events have necessitated the respondent no.1 to move the application for modification of injunction. Considering the fact that the building is more than 100 years old, it would continue to deteriorate day by day and it cannot be said that the building would continue to remain in the same condition as it was when the suit was filed more than two years ago. According to the respondent no.1, on account of further deterioration, the building became extremely dangerous and that certainly was change of circumstance covered by Rule 4 of

Order 39 for modification of the order of injunction. The submission is accepted. In my opinion, there is no merit in the contention that the motion taken out by the respondent no.1 for modification was not maintainable under Rule 4 of Order 39 of the Code of Civil Procedure.

4. The next question that is required to be considered is whether the building infact has become so dangerous that the appellants must be directed to remove themselves and permit the respondent no.1 its demolition forthwith. Since the report of the Court Commissioner appointed by the trial court was doubted this Court (Coram :A.M. Khanwilkar, J), by an order dated 15th June 2006, appointed Mr.A.P. Patwardhan, Architects and Engineers as an expert Court Commissioner to visit the site, inspect the property and submit his report. The Court Commissioner accordingly inspected the property and has submitted his report on 27th June 2006. In his report, the Court Commissioner has noted that some portion was very dangerous and has already been demolished. The Court Commissioner has then noted that the remaining portion of the building was to be demolished upto the ground floor to avoid further mishap of collapse as the building abuts very busy and crowded road. However, in view of certain observations made in

the report, this Court (Coram A.M.Khanwilkar, J) by its order dated 7th July 2006 permitted the appellant to submit to the municipal corporation a proposal of reconstruction and/or repairs of existing structure and directed that if the application was made within two weeks, the respondent no.1 municipal corporation shall consider the same on its own merits.

5. Learned counsel for the respondent no.1 has placed on record a copy of the order dated 7th December 2006 passed by the Executive Engineer of Mumbai Municipal Corporation rejecting the proposal of the appellants for repairs of the building. The copy is taken on record and marked "X" for identification. By the said order, the respondent no.1 municipal corporation has rejected permission for repairs interalia on the ground that the building is structurally unstable and is found to be in extremely dangerous condition which needs to be vacated immediately. The expert body i.e. civil engineering department of the municipal corporation has come to the conclusion that permission for repairs cannot be granted as the building is structurally unstable. In the absence of any perversity in the decision, this court cannot interfere in the said finding. In view of the fact that the building is in extremely dangerous condition, I see

no reason to interfere in the order passed by the City Civil Court directing the appellants to remove themselves and further granting permission to the respondent no.1 to demolish the building.

6. For these reasons, there is no merit in the appeal which is hereby dismissed.

7. At the request of the learned counsel for the appellant, operation of this order is stayed for a period of one week.

(D.G. KARNIK, J)